



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Princeton Gamma-Tech, Inc.

File: B-228052.2

Date: February 17, 1988

DIGEST

1. General Accounting Office finds unobjectionable comparative technical scoring in competitively negotiated brand name or equal solicitation in which nonbrand name equipment receives higher technical score than brand name, where its performance was technically superior to brand name; it is unreasonable to assume that a proposal offering the brand name would be scored equal to an offer possessing merit beyond the minimum requirements specified when the solicitation clearly put offerors on notice that offers would be comparatively evaluated on a point-scored basis and provided technical evaluation factors.
2. General Accounting Office determines conduct of procurement was deficient when (1) selection determination for walk-through metal detectors was based on comparative numerical scoring analysis, which was inconsistent with the pass/fail operational equipment testing actually conducted; (2) discussions were not meaningful because the protester was not sufficiently alerted to the deficiencies in its proposal as evaluated; and (3) evaluation of awardee's proposal was inconsistent with the solicitation and lacked a reasonable basis in the area of units in operation.
3. Where no other corrective action is practicable because agency proceeded with performance in face of protest based on urgency determination, successful protester is entitled to recover its proposal preparation costs and the costs of filing and pursuing the protest, including reasonable attorneys' fees.

DECISION

Princeton Gamma-Tech, Inc., protests the award of a contract to Astrophysics Research Corporation for 126 walk-through metal detectors under request for proposals (RFP) No. 87-7054, issued by the United States Marshals Service,

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Department of Justice. The protester contends that the agency improperly evaluated both its and the awardee's offer by (1) giving its offer of brand name equipment less than the maximum available technical points; (2) conducting inadequate discussions concerning its proposal; and (3) waiving the RFP's units in operation requirement for the awardee.

We sustain the protest.

BACKGROUND

The RFP, as amended, solicited offers for delivery and maintenance of the machines to be installed at federal court facilities within the United States. It requested offers on a "brand name or equal" basis and designated the Meteor 118, or equal, listing a number of salient characteristics, including the ability to reliably detect small caliber stainless steel weapons, while screening out coins, keys, and other personal items.

Award was to be made to the offeror whose proposal, conforming to the solicitation, was determined to be in the best interest of the government, price and other factors considered. The RFP included two equally weighted technical evaluation factors, Equipment (50 points) and Maintenance/Performance Capability (50 points) upon which, along with price, proposals would be comparatively evaluated. The Equipment factor encompassed the extent to which the offered units met the RFP requirements and the salient characteristics, and offerors were instructed to submit information to establish this. The point scoring plan for the Equipment factor, not disclosed in the RFP, allocated points for performance exceeding satisfactory compliance with the salient characteristics. For example, under one subcriterion, "detection of small caliber stainless steel weapons," there were a possible 20 points for an outstanding rating, 15 points for superior, 10 for adequate, 5 for weak and 0 for unsatisfactory.

The Maintenance/Performance Capability factor encompassed corporate capability for nationwide security project management, as evidenced by the offeror's established installation and maintenance support capabilities, as well as overall equipment downtime. A maintenance plan was to be submitted and evaluated against the government's overall requirement to have minimal or no equipment malfunctions and downtime. This factor also covered a requirement that the offerors have approximately 20 of the "precise units as being offered" in operation in, preferably, 5 different commercial or governmental locations within the United States for approximately 1 year.

Total prices were to be compared under a formula, with the lowest-priced technically acceptable offer receiving the maximum weight.

On the closing date for receipt of proposals, the Marshals Service received seven proposals, which it submitted to the Department of Transportation, Transportation Systems Center, for technical evaluation. Operational testing of units other than Princeton Gamma Tech's Metor 118 brand name unit was conducted. The agency did not test the Metor at this time because it had been tested by the Center in the spring of 1986 at the Department of State test facility and, reportedly, in field evaluations during the course of the procurement. All initial proposals were found acceptable and thus were placed within the zone of consideration. The final competitive range determination included Astrophysics and Ion Track, but did not include Princeton Gamma-Tech.

There was a total 16 point difference between the protester's and the awardee's proposals. Under the Equipment factor, Astrophysics placed first and Princeton Gamma-Tech third. The six point difference between the Equipment scores of the awardee and the protester resulted primarily from the superior rating of the Astrophysics unit (the "Sentry AT" unit, manufactured by Del Norte, Technology) to detect small caliber weapons. Under the Maintenance/Performance Capability factor, Astrophysics was rated highest and Princeton Gamma-Tech fourth, with a 10 point difference between the two offerors. Five points of this scoring differential are accounted for under the subfactor "maintenance organization," with the remaining five points distributed throughout the maintenance area. Astrophysics' maintenance capability was rated higher based on consideration of the offered unit's maintenance and service record as well as that of a previous model of the same manufacturer. Princeton Gamma-Tech's maintenance capability was determined not to meet the RFP requirements, and accordingly was scored relatively low, because the evaluation team found that the protester had not shown it had the maintenance network needed to support the units in the field, and that the firm's maintenance plan indicated no minimum staffing level.

Although Astrophysics' highest-rated proposal was not lowest-priced, the agency determined that the firm's offer represented the best combination of price and non-price

advantages, and awarded a contract to Astrophysics in the amount of \$377,370, based on \$2,995 per unit, \$15 per unit more than Princeton Gamma-Tech's offer.

PROTEST ALLEGATIONS

The protester first contends that the method of evaluation was improper because its offer of the brand name Meteor 118 was not awarded the maximum number of Equipment factor points for meeting the salient requirements. The protester maintains that, as a result, its offer effectively was downgraded for complying with the specifications, which presented the brand name as meeting the agency's minimum needs. The protester further alleges in this regard that the operational testing on which the evaluation was based was conducted unfairly, in that it appears its units were not tested under the same conditions as the Astrophysics unit.^{1/} Second, Princeton Gamma-Tech alleges that the agency failed to conduct meaningful negotiations. The protester contends that while the agency report characterized the firm's maintenance proposal as marginal and inadequate, the deficiency cited by the agency during discussions was not related to the evaluated deficiencies, specifically those concerning the adequacy of its maintenance network and its staffing.

Finally, the protester argues that the Astrophysics score under the Maintenance/Performance Capability factor was improper because the agency acknowledges it considered the operation of a prior Del Norte unit, the FS-3 (allegedly because the Sentries AT was relatively new to the market), in evaluating Astrophysics' compliance with the units in operation requirement, despite the RFP provision requiring that the "precise" units being offered meet the 1-year requirement. The protester contends that, had maintenance capability been evaluated in accordance with the RFP, it would have received a higher score in this area than Astrophysics, and that, had it known of the flexibility in the evaluation, as evidenced by the evaluation of Astrophysics' unit, it could have offered a newer, overall more competitive model, the Meteor 120.

^{1/} The agency argues that this allegation is untimely since Princeton Gamma-Tech, Inc., did not raise it in its original protest. We find it timely, however, since it clearly is related to the challenge to the technical evaluation of its unit and its failure to receive the maximum points available. The agency has had a full opportunity to respond to the argument.

ANALYSIS

Comparative Scoring

Initially, we do not consider the evaluation scoring method inherently defective as the protester suggests. That is, in a competitively negotiated brand name or equal solicitation, we consider unobjectionable comparative technical scoring where nonbrand name equipment may receive a higher technical score than the brand name if its performance is technically superior to the brand name's. The solicitation clearly put offerors on notice that offers would be comparatively evaluated on a point-scored basis, provided technical evaluation factors, and instructed offerors to demonstrate the extent to which the offered unit "meets or exceeds" the requirements. Consequently, it was unreasonable for the protester to assume that a proposal of the brand name would be scored equal to an offer possessing merit beyond the minimum requirements specified in the RFP. See generally, Computer Sciences Corp., B-189223, Mar. 27, 1978, 78-1 CPD ¶ 234.

Operational Testing

We find that the operational testing relied upon by the agency did not provide a rational basis for the evaluation scoring. The record indicates that the testing was conducted on the basis of whether the offered unit met or did not meet the salient characteristics, i.e., on a pass/fail basis. The evaluation scoring, on the other hand, was done on a comparative numerical basis. Although there thus necessarily was a conversion of the pass/fail scores into comparative numerical scores, there is no indication in the record of how this was accomplished.

Further, as the protester points out, there is no indication in the record that the protester's offered unit was tested at any point during the procurement process. While the agency indicates that tests of the protester's offered unit were conducted at the Department of State approximately 1 year prior to the instant procurement, as well as in "field evaluations," there is no documentation in the record as to any of this testing. The agency has submitted documentation of post-award walk-through detection testing conducted at the United States District Courthouse in Chicago on both the awardee's and protester's offered units in November 1987. Although the Astrophysics unit passed the small caliber weapon detection aspect of these tests by detecting a .22 caliber weapon in all 7 body positions, while the Princeton Gamma-Tech unit failed to detect the

weapon at the ankle position, the protester points out that the height and walking speed of different testers could affect walk-through test results and that calibration procedures followed during any testing would have been critical to good performance. Again, it is not clear from the record what the conditions were surrounding even this post-award testing.

We reiterate, moreover, that the critical point here is not whether any testing was conducted, but that the testing that was conducted was on a pass/fail basis that did not correspond to an evaluation on a comparative basis, and that there is no evidence in the record as to how the agency converted the two offerors' scores to arrive at a six point advantage for Astrophysics under the Equipment factor evaluation. While procuring officials have a reasonable degree of discretion in evaluating proposals, we will examine whether an evaluation had a rational basis. Pharmaceutical Systems, Inc. B-221847, May 19, 1986, 86-1 CPD ¶ 469. Given the incongruity of conducting tests on a pass/fail basis and the resulting comparative numerical scoring, we find there was no apparent rational basis for the scoring of proposals under the Equipment factor.

Inadequate Discussions

We also agree with Princeton Gamma-Tech that discussions with the firm were not meaningful because the cited deficiency in its maintenance plan was not sufficient to alert the firm to the deficiency for which the firm's proposal actually was downgraded. In order for discussions in a negotiated procurement to be meaningful, contracting officials must advise offerors in the competitive range of deficiencies in their proposals, to afford offerors an opportunity to revise their proposals to fully satisfy the government's requirements. See Federal Acquisition Regulation (FAR) § 15.610(c)(2) (FAC 84-16); Avitech, Inc., B-223203.2, Mar. 27, 1987, 87-1 CPD ¶ 351.

The contracting officer's deficiency letter to Princeton Gamma-Tech requested that the company consider the following:

"You did not furnish the required plan for maintenance and periodic inspection and adjustment of walk through metal detectors as required, see page C-3, § 3.1.1."

This cited RFP section deals only with a single aspect of the maintenance plan (i.e. optional, post-warranty preventive/on-call remedial maintenance), and does not refer to the maintenance network or minimum staffing. The

protester responded to the deficiency letter by submitting a plan to furnish maintenance--service, labor, and parts replacement--for expired warranty equipment. The Marshals Service appears to have concluded at this point, however, that the protester's proposal had inadequately established that the firm had a maintenance network in place or an acceptable staffing level. These two perceived deficiencies are unrelated to the maintenance plan deficiency cited by the agency, and were never brought separately to the protester's attention. If the agency believed these two areas were deficient, we think it was obligated to incorporate these in its deficiency notice, particularly in view of its decision to request more information concerning the protester's overall maintenance capability. While discussions need not be all-encompassing, it is incumbent upon government negotiators to be as specific as practical considerations will permit in advising offerors of the corrections required in their proposals. Universal Shipping Co., Inc., B-223905.2, Apr. 20, 1987, 87-1 CPD ¶ 424. We do not think the agency met this standard.

Units In Operation

Finally, we find that the evaluation of Astrophysics' proposal under the units in operation requirement was not reasonable. Astrophysics' offer listed 22 units at four locations within the United States, with the first installation on June 14, 1987, meaning the units were in place for less than the approximate 1 year requirement. Astrophysics, nevertheless, was not significantly down-scored in this area. The agency maintains that, because the RFP provided for flexibility in the evaluation, it properly exercised its discretion in determining Astrophysics had satisfied the requirement. We disagree.

Any flexibility inherent in the evaluation process here derived from the scoring process alone; while, through the scoring, the agency had flexibility to take into account and weigh several different considerations, the agency did not have the flexibility to score a proposal highly if it did not meet a requirement at a high level. This appears to be precisely what the Marshals Service did, however. By calling for units in service for approximately 1 year, the RFP indicated that only proposals demonstrating at least substantial compliance with this standard would be scored highly. Astrophysics was scored highly even though the unit it was proposing had been in operation for no more than 3 1/2 months prior to award. Such evaluation scoring simply is not consistent with the terms of the RFP.

It appears that Astrophysics' high score in this area is attributable, at least in part, to the agency's

consideration of the operation and maintenance of a previous Meteor model, the FS-3. The agency argues that this was justified because the Sentries AT unit was a modification of the FS-3, and had "substantial commonality" with the FS-3 unit. We find it unclear from the record whether the two units are substantially the same, since there appears to be a significant difference in the coil design. In any case, however, we agree with the protester that the RFP did not allow for experience of a previous model in order to meet the units in operation requirement. The RFP required 1-year operation of the "precise" units offered; it simply did not allow for consideration of predecessors to the unit offered. Again, the protester has stated that, had it been aware of the agency's flexible approach to the evaluation, it would have offered an updated unit that does not meet the strict terms of the units in operation requirement.

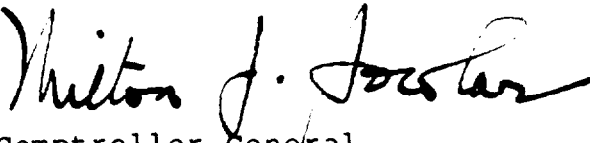
CONCLUSION/RECOMMENDATION

While it is not clear precisely what impact the various deficiencies discussed above had on the selection decision, it is clear that a proper evaluation could have resulted in significantly different scores. We note in this regard that the 16 point difference between the protester's and awardee's scores does not take into account the cost evaluation and, thus, the protester's somewhat lower proposed cost. More importantly, the deficiencies are of a nature that they may simultaneously have improperly reduced the protester's score while improperly inflating the awardee's. In addition, the protester could have offered a different unit had it been aware how certain aspects of the evaluation would be conducted. We therefore sustain the protest on the grounds that the evaluation was conducted improperly and that the results lack a rational basis.

Ordinarily under these circumstances, we would recommend termination of the contract and resolicitation. This is not practicable here, however, since the Marshals Service made a determination, as permitted under the Competition in Contracting Act, to continue contract performance during the pendency of the protest based on urgent and compelling circumstances. See 31 U.S.C. § 3553(d)(2)(A)(ii) (Supp. III 1985). Delivery has begun and the contract is scheduled for completion in March 1988. As no other corrective action is appropriate, the protester is entitled to recovery of its proposal preparation costs, see DBA System, Inc., B-224306, Dec. 31, 1986, 86-2 CPD ¶ 722, and its costs of filing and pursuing the protest, including any reasonable attorneys' fees incurred. See 4 C.F.R. § 21.6(d) (1987). Accordingly, by separate letter, we are advising the Director of the Marshals Service of our determination. Princeton Gamma-Tech

should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(f).

The protest is sustained.

for 
Comptroller General
of the United States